

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:08CR3037
)	
v.)	
)	
FRANK N. JUVIEL, JOSE LUIS)	MEMORANDUM AND ORDER ON
RODRIGUEZ,)	MOTION FOR CONTINUANCE
)	
Defendants.)	
)	

The defendant Frank N. Juviel's counsel, Richard L. Alexander, has filed a Motion for Continuance, [filing 51](#), and following a telephone conference with all counsel, I have concluded that in the interest of justice it should be granted to January 12, 2009.

The motion was prompted by the miscommunication through electronic endeavors to provide defense counsel with documentation from the prosecutor's file. Although the material was sent and received by the counsel of the defendant Rodriguez, it was not received by counsel of the defendant Juviel. The material sent has cast a different light on settlement negotiations and the readiness needs of defendant Juviel's counsel. Inability of Juviel's counsel to be ready for trial at the assigned date of October 14, 2008, means that both he and the counsel for the government, given the likelihood that a trial will consume an expected ten days, find their calendars clogged with other assignments. Failure to grant a continuance in this case, taken as a whole, is not so unusual or so complex as to fall within clause (ii) of [18 U.S.C. § 3161\(h\)\(B\)](#), such failure would deny the defendant and the government continuity of counsel and would deny counsel for the defendant Juviel and the attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. This continuance is not granted because of general congestion of the court's calendar or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the government. The counsel for the defendant Rodriguez assures the court that his client has no resistance to the motion for continuance.

IT IS ORDERED that:

1. the Motion for Continuance, [filing 51](#), is granted and the trial is continued to January 12, 2009, at 9:00 a.m., jury selection to begin at that time. The time from this day until January 12, 2009, shall be excluded in computing the time within which the trial of any offense must commence; and
2. the defendants shall file waivers of the Speedy Trial Act within 10 days of this date.

Dated September 29, 2008.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge